IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 689 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHIKHABHAI KANJIBHAI CHAUHAN

Versus

NAROTAMDAS BHAGWANDAS THAKKAR

Appearance:

1. Special Criminal Application No. 689 of 2003

MR VIJAY PATEL FOR HL PATEL ADVOCATES for Petitioner

MR HIMANSHU PATEL FOR MR ABHAYKUMAR P SHAH for Respondent No. 1

MR VM PANCHOLI APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 16/08/2004

ORAL JUDGEMENT

1. By means of filing this petition under Article

227 of the Constitution, the petitioner challenges the order dated 23.6.2003 rendered in Criminal Revision Application No. 79 of 2002 by the learned Sessions Judge, Ahmedabad Rural, confirming the order dated 17.8.2002 rendered below application Ex.52 in Criminal Case No.687 of 1998 by the learned JMFC, Dholka rejecting the application filed by the petitioner for adding offences under sections 420, 467, 468 and 471 of the IPC in Criminal Case No.687 of 1998.

2. The petitioner filed Criminal Complaint against respondent No.1 for alleged commission of offence under section 138 of the Negotiable Instruments Act being Criminal Case No.687 of 1998 in the Court of learned JMFC, Dholka. During the course of evidence, it is revealed that the cheque in question issued by respondent No.1/original accused was from the account of another person. The petitioner therefore filed application Ex.52 for adding charge under sections 420, 467, 468 and 471 of IPC. The learned JMFC, Dholka vide order dated 17.8.2002 rejected the application. Aggrieved thereby the petitioner filed Criminal Revision Application No.79 of 2002 before the Sessions Court, Ahmedabad Rural which also met with he same fate, which has given rise to the present petition.

3. Having heard Mr. Vijay Patel, learned advocate of the petitioner, Mr. Himanshu Patel for Mr. Abhaykumar Shah, learned advocate of respondent No.1/original accused and Mr. VM Pancholi , learned APP for respondent No.2 State of Gujarat and on having perusal of the averments made in the application as well as two orders which are impugned in this petition, this court is of the opinion that no illegality is committed by both the courts below in passing the said orders. In paragraph 5 of the order, the learned Sessions Judge has observed that taking into consideration the depositions of the witnesses, it could not be said that prima facie offences under sec.420, 467, 468 and 471 of IPC are established. It is true that Court can alter or add in charge at any time but for that cogent evidence is required. In this case, there is nothing on record for which question of alter or add in charge is arisen. In paragraph 6 of the order, the learned Sessions Judge has observed that as far as sections 216, 218, 220 and 221 of the Code of Criminal Procedure are concerned, they are not attracted at all in this case and no procedure is required to be followed under these sections as no case is made out for the offences punishable under Sections 420, 467, 468 and 471 of IPC. Lower Court has rightly dismissed the application of the accused. The learned

Sessions Judge did not find any reason to enter into the findings of the lower court and dismissed the revision application. Mr. Patel, learned advocate of the petitioner could not dislodge this finding recorded by the learned Sessions Judge.

4. It is settled principle of law that concurrent finding of facts recorded by both the courts below cannot be assailed in a petition filed under Article 227 of the Constitution of India since the powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the courts below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex court in the case of (i) Mohd. Yunus v. Mohd. Mustaqim & others, AIR 1984 SC 38, (ii) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557, (iii) H.B. Gandhi v. M/s. Gopinath (1992) Supp. 2 SCC 312 and (iv) State of Maharashtra v. Milind and others (2000) 1 SCC 4.

5. Seen in the above context, the petition lacks merit and deserves to be rejected.

6. In the result, the petition fails and is accordingly rejected. Rule is discharged. Interim relief granted earlier stands vacated.

(A.M. Kapadia, J.)

(karan)